IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6280 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVABHAI @ DEVJIBHAI BHAIBHAI GOHIL

Versus

COMMISSIONER OF POLICE VADODARA CITY

Appearance:

MR SUNIL C PATEL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 25/02/2000

ORAL JUDGEMENT

1. This special civil application is directed against the detention order dtd. 12th August, 1999 passed by the Police Commissioner, Vadodara City, whereby the petitioner has been detained under the provisions of Gujarat Prevention of Anti-social Activities Act, 1985

(`PASA Act' for short), 1985. The petitioner is detained in District Jail, Jamnagar, since the date of order of detention.

2. No reply to the petition has been filed by any of the respondents. Mr. H.L. Jani, learned A.G.P. has submitted that his representation has been rejected and the detention order has already been confirmed by the Board.

3. The grounds of detention enclosed with the detention order show that four criminal cases were registered against the petitioner under the Prohibition Act, two in 1996, one in 1997 and last one in 1999. Cases of 1996 and 1997 are pending trial, whereas investigation was pending in the case of 1999, at the time, when the detention order was passed. The detaining authority has found that the petitioner is a bootlegger and has also referred to his antisocial activities and because of fear witness were not ready to come out openly to give statements against the petitioner, and therefore, Sec.9(2) of the PASA Act has been invoked. In support of the allegations against the petitioner reference has been made to the statements made by the three witnesses. The detaining authority has mentioned that in the facts of this case, other alternatives provided under the Act were not sufficient to deter the petitioner from continuing his antisocial activities and it was necessary to detain him.

4. Having heard both the sides and having gone through the grounds of detention, I find that as per the law laid down by the Supreme Court in several decisions, no case of threat of breach to the public order is made out, even if all the allegations as levelled against the petitioner are taken to be correct on their face value. At the most it is a case of breach of law and order. The impugned detention order, therefore, cannot be sustained in the eye of law, as existence of threat to the public order is the pre-condition for detention order to be passed. The impugned detention order dtd. 12th August, 1999, passed by the Police Commissioner, Vadodara City, is hereby quashed and set aside. It is directed that the petitioner-detenu namely Devabhai alias Devjibhai Babhaibhai Gohil, shall be released forthwith, if not required under any other detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.

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